

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

ANTHONY D. FIORDELISO and
CATHY A. FIORDELISO

Chapter 7
Case No. 18-20833

Debtors

NOTICE OF MOTION TO AVOID JUDGMENT LIENS

PLEASE TAKE NOTICE that Debtors, by their counsel, upon the affirmation of their counsel and the exhibits annexed thereto, will move before the Honorable Paul R. Warren, United States Bankruptcy Judge, at the United States Bankruptcy Court, 100 State Street, Rochester, New York, on November 15, 2018, at 10:00 a.m., or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. section 522(f) to avoid judgment liens that impair the homestead exemption duly claimed in this proceeding.

PURSUANT TO FRBP 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES IN ROCHESTER AND WATKINS GLEN: IF YOU INTEND TO OPPOSE THE MOTION: AT A MINIMUM YOU MUST SERVE: (1) THE MOVANT AND MOVANT'S COUNSEL, AND (2) IF NOT THE MOVING PARTY (A) THE DEBTORS AND DEBTOR'S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS' COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THIS MOTION *NOT WITHSTANDING THE DECEMBER 1, 2009 AMENDMENTS* TO FRBP 9006(a). IN THE EVENT NO WRITTEN OBJECTION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDER THE MOTION AS UNOPPOSED.

Dated: Rochester, New York
October 13, 2018

/s/ William C. Rieth

William C. Rieth, Esq.
Attorney for Debtors
16 West Main Street, Suite 756
Rochester, New York 14614
(585) 232-6520

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ANTHONY D. FIORDELISO and CATHY A. FIORDELISO, by their attorney, William C. Rieth, Esq., as and for their motion to avoid a judgment lien, respectfully show this Court as follows:

1. Debtors filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code with the Clerk of this Court on August 14, 2018.
2. At the time of filing, by virtue of a warranty deed recorded in the Office of the Monroe County Clerk on January 4, 2000 in liber 9260 of Deeds at page 345 *et seq.* Debtors owned and still own a single family residence located at 246 Lemoyne Avenue, Rochester, New York 14612.
3. At the time of filing the property had and still has a fair market value of approximately \$120,040.00. A copy of a market analysis of the value of the property is annexed hereto.
4. At the time of filing the property was encumbered by the following mortgage apparently given by Anthony Fiordeliso only:

Initial Mortgage Holder	Date recorded	Liber, page	Original Mortgage Amount	Balance at time of filing
Monroe County Department of Human Services	9/12/13	1 25344, p. 331	unstated	estimated at \$4,600.00

5. The purchase money mortgage given by debtors to M&T Mortgage Corporation in January, 2000 was discharged following the refinance by debtors of their home in November, 2005 with a mortgage given to Capital One Home Loans, LLC. Although there was no assignment of record of that mortgage, a discharge of that mortgage was recorded in the Monroe County Clerk on August 19, 2014 in liber 3653 of discharges at page 5.

6. In their schedules, Debtors claimed the homestead exemption afforded by New York's Debtor and Creditor Law.

7. Prior to the time of filing the bankruptcy petition, the following took judgment against Debtors and docketed the same with the Monroe County Clerk:

<u>Holder</u>	<u>Date Docketed</u>	<u>Amount</u>
LVNV Funding, LLC	7/23/2018	\$987.98

8. In light of the fair market value of the property, \$120,040.00, and the duly claimed homestead exemption, it is clear that the foregoing judgment lien impairs the homestead exemption.

WHEREFORE Debtors respectfully request an order pursuant to 11 U.S.C. section 522(f) avoiding the judgment lien of the aforesaid creditor in its entirety.

Dated: Rochester, New York
October 13, 2018

/s/ William C. Rieth
William C. Rieth, Esq.
Attorney for Debtors
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